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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,918	03/14/2002	John H. Oates	0102323-00103	3586

21125 7590 10/17/2006

NUTTER MCCLENNEN & FISH LLP  
WORLD TRADE CENTER WEST  
155 SEAPORT BOULEVARD  
BOSTON, MA 02210-2604

EXAMINER

ODOM, CURTIS B

ART UNIT PAPER NUMBER

2611

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/099,918	OATES ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Curtis B. Odom	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1, 3-10 and 12-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-10, and 12-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

1. The amendments filed on 7/24/2006 have been entered.

### *Claim Rejections - 35 USC § 101*

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1, 3-10, and 12-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. MPEP 2173.05(p) states the following:

**“A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph. In Ex parte Lyell, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990), a claim directed to an automatic transmission workstand and the method steps of using it was held to be ambiguous and properly rejected under 35 U.S.C. 112, second paragraph.**

**Such claims should also be rejected under 35 U.S.C. 101 based on the theory that the claim is directed to neither a “process” nor a “machine,” but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. Id. at 1551.”**

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Independent claims 1, 10, and 17 recite limitations of a communication device apparatus and the process steps (first process and second process) of using the communication device apparatus. Thus, according to MPEP 2173.05(p), the claims are rejected under 35 U.S.C. 101.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 3-10, and 12-19 are rejected under 35 U.S.C. 112, second paragraph, for being indefinite. MPEP 2173.05(p) states the following:

**“A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph. In *Ex parte Lyell*, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990), a claim directed to an automatic transmission workstand and the method steps of using it was held to be ambiguous and properly rejected under 35 U.S.C. 112, second paragraph.**

**Such claims should also be rejected under 35 U.S.C. 101 based on the theory that the claim is directed to neither a “process” nor a “machine,” but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. *Id.* at 1551.”**

Independent claims 1, 10, and 17 recite limitations of a communication device apparatus and the process steps (first process and second process) of using the communication device

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apparatus. Thus, according to MPEP 2173.05(p), the claims are rejected under 35 U.S.C 112, second paragraph.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over McBurney et al. (U. S. Patent No. 6, 430, 503) in view of Subramanian et al. (US 2202/0031166)

Regarding claim 17, McBurney et al. discloses a communication device (see Fig. 2) or detecting transmitted signals in pseudo random code spread spectrum waveforms (see column 5, lines 10-19) comprising:

a measurement platform (Fig. 2, block measurement platform) operating under a first operating system (column 7, lines 20-27) and executing a first set of communication tasks such as correlation (see column 5, lines 9-19) for detecting transmitted signals encoded in pseudo random waveforms,

a user platform (Fig. 2, user platform) operating under a second operating system (see column 7, lines 20-27) and executing a second set of communication tasks such as generating information pursuant to user specific applications (see column 4, lines 22-25) for detecting

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transmitted signals encoded in waveforms, where the first and second operating systems differ (see column 11, lines 18-19),

a measurement data transfer (see Fig. 2) representing a protocol translator coupled to the first and second platforms and translating intermediate measurement data communications in between (see column 4, lines 5-14).

McBurney et al. further discloses the measurement data can be translated between the platforms in a variety of methods (see column 4, lines 8-14); however, McBurney et al. does not disclose the waveforms are user waveforms or the measurement platform sending instructions to the protocol translator for determining how it translates between the platforms.

However, Subramanian et al. discloses detecting user spread spectrum signals through signal processing (see section 0040), wherein the signal processing provides necessary information to configure the hardware components (processors). Subramanian et al. further discloses the hardware components (kernels) have a reconfigurable interconnect which can be controlled by inputting interconnect configurations to the interconnect (see section 0061) to perform discrete function for processing a signal (see Abstract). Therefore, it would have been obvious to control the interconnect (protocol translator) of McBurney et al. as disclosed by Subramanian et al. for user spread spectrum waveforms since Subramanian et al. discloses the interconnect offers substantially greater flexibility than that of hardwired or parameterized application specific integrated circuit (ASIC) solutions (see section 0062).

*Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis B. Odom whose telephone number is 571-272-3046. The examiner can normally be reached on Monday- Friday, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on 571-272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Curtis Odom  
October 16, 2006